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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,658	01/19/2004	Knud Klingler	41587.012502(346)	9864

29493 7590 07/06/2006

HUSCH & EPPENBERGER, LLC  
190 CARONDELET PLAZA  
SUITE 600  
ST. LOUIS, MO 63105-3441

EXAMINER
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EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/760,658	Applicant(s) KLINGLER, KNUD	
	Examiner Joseph F. Edell	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The reference to a related application in the first sentence of the specification is improper. 35 USC 119(e) is not toward priority to a prior-filed nonprovisional application.

2. It is noted that this application appears to claim subject matter disclosed in prior Application No. 109/729,538, filed December 2000. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which

entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the

information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

3. The benefit claim filed on 29 March 2006 was not entered because the required reference was not timely filed within the time period set forth in 37 CFR 1.78(a)(2) or (a)(5). If the application is an application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a nonprovisional application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the reference to the prior application must be made during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). If applicant desires the benefit under 35 U.S.C. 119(a)-(d) or (f), 35 U.S.C. 120, or 35 U.S.C. 365(c) based upon a previously filed application, applicant must file a petition for an unintentionally delayed benefit claim under 37 CFR 1.78(a)(3) or (a)(6). The petition must be accompanied by: (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted); (2) a surcharge

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under 37 CFR 1.17(t); and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

### ***Specification***

4. The specification amendment filed 29 March 2006 is objected for not being accompanied by the necessary petition under 37 CFR 1.78(a).
5. The disclosure is objected to because of the following informalities: page 1, line 20, page 2, line 2, and page 2, line 7 refer to claim 1. However no claim 1 is present in the application.

Appropriate correction is required.

### ***Claim Objections***

6. Claim 36 is objected to because of the following informalities: "a slot" (line 2) should read --the slot--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 32, 33, 37, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,609,394 to Ligon, Sr. et al.

Ligon, Sr. et al. disclose a lumbar support mechanism that includes all the limitations recited in claims 32, 33, 37, and 42. Ligon, Sr. et al. show a lumbar support mechanism having a lumbar support element 18 (see Fig. 1) being flexible through a range of flexion, an adjustment device 40 engaging upper and lower portions of the lumbar support element, and two flap portions 27 that are oppositely-oriented, attached to the lumbar support element by two connecting webs (see Diagram A below) forming a horizontal pivoting axis about which the flap portions pivot upon adjusting of the adjustment device wherein the lumbar support element has variable resilience and the flap portions are integral with the lumbar support element. With respect to claim 34, stiffening of a lumbar support element's variable resilience upon increased flexion is an inherent property of any element subject to increased flexion.

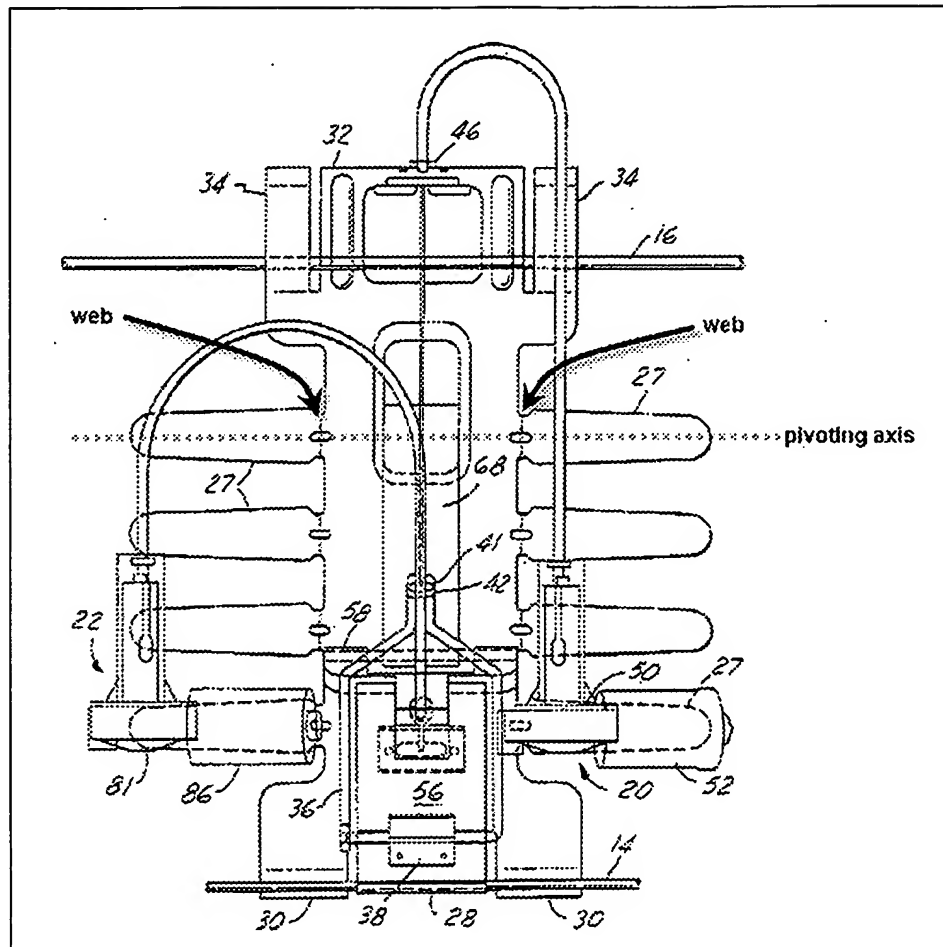


Diagram A - Annotated Figure 3 of Ligon, Sr. et al.

9. Claims 32-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Publication No. 20030006635 A1 to Klingler.

Klingler discloses a lumbar support mechanism that includes all the limitations recited in claims 32-52. Klingler shows a lumbar support mechanism having a lumbar support element 5 (see Fig. 1), an adjustment device 14 engaging upper and lower portions of the lumbar support element, and two flap portions 11,12 that are oppositely-oriented, attached to the lumbar support element by two connecting webs 10 forming a



horizontal pivoting axis, and being completely surrounded by slots 9 in the lumbar support element that are a combination of an open polygon and an open curve wherein the flaps are made of plastic or sheet metal.

10. Claims 35 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,637,817 B1 to Christopher et al.

Christopher et al. disclose a lumbar support mechanism that includes all the limitations recited in claims 32-52. Christopher et al. show a lumbar support mechanism having a lumbar support element 22 (see Fig. 4) being flexible through a range of flexion, an adjustment device 54,58,60 engaging upper and lower portions of the lumbar support element, and two flap portions 52 that are oppositely-oriented wherein the flap portions are completely surrounded and defined by slots in the lumbar support element.

11. Claims 32, 33, 37, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,779,844 B2 to Dosen et al.

Dosen et al. disclose a lumbar support mechanism that includes all the limitations recited in claims 32, 33, 37, and 42. Dosen et al. show a lumbar support mechanism having a lumbar support element 14 (see Fig. 1) being flexible through a range of flexion, an adjustment device 20,22 engaging upper and lower portions of the lumbar support element, and two flap portions 42,44 that are oppositely-oriented, attached to the lumbar support element by two connecting webs (left and right portions of central cross member 38) forming a horizontal pivoting axis about which the flap portions pivot upon adjusting of the adjustment device wherein the lumbar support element has variable resilience and the flap portions are integral with the lumbar support element.

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With respect to claim 34, stiffening of a lumbar support element's variable resilience upon increased flexion is an inherent property of any element subject to increased flexion.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 32-52 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joe Edell  
June 30, 2006